IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 73 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

B.J.PATEL

Versus

HITESH NATVERLAL VYAS

Appearance:

MR MG NAGARKAR for Petitioner

MR MJ DAGLI for Respondent No. 1

MR BY MANKAD APP for Respondent No. 2

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 09/11/2000

ORAL JUDGEMENT

The original complainant of Criminal Case No. 6425 of 1997 filed against the present revision opponent No.1 in the Court of the learned Metropolitan Magistrate, Court No.8 at Ahmedabad (who will be referred to as the

learned Magistrate), has by filing this Criminal Revision Application under Sec.397 of the Criminal Procedure Code, 1973, challenged the correctness, legality and propriety of the judgment dt. 29/1/1993 rendered by the learned Additional Sessions Judge, Court No.12, Ahmedabad (who will be referred to hereinafter as the learned Judge of the Revisional Court) rendered in Criminal Revision Application No. 174 of 1990.

2. The facts leading to this Criminal Revision Application, in a nut shell, are as follows:

2.1. On or about 30/7/1990, the complainant i.e. present revision petitioner lodged a Private Complaint against revision opponent no.1 (i.e. accused of that case) for offence punishable under Sec. 392 of the Bombay Provincial Municipal Corporations Act, 1949 (for short "the Act") for contravention of Sec. 168-A of the Act. It appears from record that the learned Magistrate took the cognizance against accused for said offence. During the pendency of that complaint, accused submitted one application to the learned Magistrate with a request to stop the proceeding against him on the ground that complaint is barred by limitation under Sec. 428 of the Act as the complaint is lodged after prescribed period of six months. The learned Magistrate decided that application on merits and on 23/7/1990, and rejected that application of accused and directed the parties to proceed further.

3. Being aggrieved against and dissatisfied with the said order dt. 23/7/1990 below application presented by accused, the accused preferred Criminal Revision Application No. 174 of 1990 to the Court of City Civil & Sessions Court, Ahmedabad. The learned Judge of the Revisional Court, after hearing the parties, allowed that Criminal Revision Application by rendering his Judgment Ex.13 dt. 29/1/1993 in Criminal Revision Application No.174 of 1990, specifically holding in Para 12(C) of the order that complaint filed by opponent no.1 against the applicant is time barred and the accused against whom the offences levelled is hereby discharged. By that order, the learned Magistrate of the Revisional Court set aside the order dt. 23/7/1990 passed by the learned Judge of the trial Court.

4. Being aggrieved against and dissatisfied with the said judgment dt. 29/1/1993, rendered by the learned Judge of the Revisional Court in Criminal Revision Application No.174 of 1990, the original complainant has preferred this present Criminal Revision Application.

5. I have heard Shri M.G.Nagarkar, the learned advocate for the revision petitioner, Mr. M.J.Dagli, the learned advocate for the revision opponent no.1 and Mr. B.Y.Mankad, learned APP for revision opponent no.2 -State. I have gone through the judgment which is challenged in this Criminal Revision Application.

6. During the course of arguments, Shri Nagarkar, the learned advocate for the revision petitioner has drawn attention of this Court that for this very present case i.e. for Criminal Case No. 6425 of 1987, the original accused had preferred one Criminal Revision Application No.99 of 1988 to this Court. That Criminal Revision Application No.99 of 1988 was preferred by accused with a request to dismiss the complaint being Criminal Case no.6425 of 1987 filed against him. In that Criminal Revision Application No. 99 of 1988, the very same contention was taken with regard to limitation as well as necessity of new requisition for each time when complaint is required to be filed for continuous offence. That Criminal Revision Application No.99 of 1988 came to be decided on merits on 24/2/1989 by this Court (Coram: R.A.Mehta, J.). That Judgment rendered by this Court is at Pages from Page 17 to 22, wherein this Court has categorically held that offence for which complaint has been filed against the accused is a continuing offence, and therefore, in view of sub sec.(b) of Sec.428 of the Act, the complaint is within the time. This Court also observed in its order that no new requisition is necessary for a continuing offence. It seems that the learned Judge of the Revisional Court has not taken into consideration this Judgment in its true and correct perspective. That judgment of this Court has been referred to in Para 10 of his judgment, but surprisingly, he has casually ignored this judgment. Had the learned advocate for the complainant brought to the notice of the Court that judgment in Criminal Revision Application No.99 of 1988 is pertaining to this present very same case, then possibly he would have taken a different view. Under the circumstances, the order which is challenged in this Criminal Revision Application requires to be set aside.

7. During the course of arguments, the learned advocate for both the parties jointly submitted that no reasons be assigned while allowing this Criminal Revision Application subject certain directions be given to the learned Judge of the Revisional Court.

8. Having heard the learned advocates for both the

parties and on going through the order which is challenged in this Criminal Revision Application and the grounds taken in memo of this Criminal Revision Application, this Court is of the view that the order dt. 29/1/1993 of the learned Judge of the Revisional Court requires to be set aside without giving any reasons as desired by both the parties, of course, subject to certain directions to be given to the learned Judge of the Revisional Court.

9. In view of what is stated hereinabove, this Criminal Revision Application deserves to be allowed, and accordingly it is allowed. The order dt. 29/1/1993 passed in Criminal Revision Application No. 174 of 1990 by the City Civil & Sessions Judge, Ahmedabad is hereby set aside and Criminal Revision Application No.174 of 1990 is remanded back to the Revisionl Court to hear that revision application afresh by affording full opportunity of being heard to both the parties without being influenced by order of this Court, with the following directions:-

(i) The learned Principal Judge of the City Civil Court, Ahmedabad is directed to assign Criminal Revision Application No.174 of 1990 to a Judge other than the Judge who decided that Revision Application by his order dt. 29/1/1993.

(ii) The learned Judge to whom said Criminal Revision Application No. 174 of 1990 will be assigned, will take into consideration the judgment of this Court dt. 24/2/1989 passed in Criminal Revision Application No.99 of 1990 in its true and correct perspective.

10. As the Criminal Revision Application No. 174 of 1990 is of the year 1990, the learned Judge to whom this Criminal Revision Application No.174 of 1990 will be assigned, shall dispose of said Criminal Revision Application within three months from the date of receipt of writ of this Court.

11. With the above discussions and directions, this Criminal Revision Application is allowed accordingly. Rule is made absolute to the aforesaid extent.

Date: 9/11/2000. (H.H.MEHTA,J.)
ccshah